

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**SHERRIE J. MONTOYA,**

**Plaintiff,**

**v.**

**CIV No. 14-0836 LH/SMV**

**CAROLYN W. COLVIN,  
Acting Commissioner of Social Security Administration,**

**Defendant.**

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED  
FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition [Doc. 33] ("PF&RD"), issued on December 16, 2015. On reference by the Court, [Doc. 12], the Honorable Stephan M. Vidmar, United States Magistrate Judge, recommended that Plaintiff's Opposed Motion for E.A.J.A. Award of Attorney's Fees and Costs [Doc. 31] should be granted in part and denied in part. Judge Vidmar found that (1) the motion impermissibly sought attorney fees for clerical work, and (2) the hours expended by Plaintiff's counsel were excessive. [Doc. 33]. Therefore, he recommended that, in total, Plaintiff be awarded \$10,395 in attorney fees. No objections were filed, and the time for doing so has passed. Accordingly, the Court will adopt the PF&RD.


**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Magistrate Judge's Proposed Findings and Recommended Disposition [Doc. 33] are **ADOPTED**.

**IT IS FURTHER ORDERED** that Plaintiff's Opposed Motion for E.A.J.A. Award of Attorney's Fees and Costs [Doc. 31] is **GRANTED IN PART and DENIED IN PART**.

Plaintiff Sherrie J. Montoya is be authorized to receive \$10,395 for payment to her attorney for services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

**IT IS FURTHER ORDERED** that if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, counsel shall refund the smaller award to Plaintiff pursuant to *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) ("Congress harmonized fees payable by the Government under EAJA with fees payable under § 406(b) out of the claimant's past-due Social Security benefits in this manner: Fee awards may be made under both prescriptions, but the claimant's attorney must refun[d] to the claimant the amount of the smaller fee.") (internal quotation marks omitted).

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
SENIOR UNITED STATES DISTRICT JUDGE